

## **APPENDIX O**

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### **STIPULATION FOR CAWCD V UNITED STATES**

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**Draft Environmental Impact Statement  
Allocation of Water Supply and  
Long-Term Contract Execution  
Central Arizona Project**

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MAY 09 2000  
CLERK U.S. DISTRICT COURT  
DISTRICT OF ARIZONA  
BY \_\_\_\_\_ DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT, a  
municipal corporation of the State of  
Arizona,

Plaintiff,

v.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT  
OF THE INTERIOR, BUREAU OF  
RECLAMATION; BRUCE BABBITT,  
Secretary of the Interior; PATRICIA  
J. BENEKE, Assistant Secretary of  
the Interior; ELUID L. MARTINEZ,  
Commissioner of Reclamation;  
ROBERT JOHNSON, Regional  
Director, Lower Colorado Region,  
United States Bureau of  
Reclamation,

Defendant.

No. CIV 95-625-TUC-WDB (EHC)

No. CIV 95-1720-PHX-EHC

(Consolidated Action)

ORDER

438

1 UNITED STATES OF AMERICA,  
2 Counterclaimant,

3 v.

4  
5 CENTRAL ARIZONA WATER  
6 CONSERVATION DISTRICT, a  
7 municipal corporation of the State of  
8 Arizona,

9 Counterdefendant.

10 This matter having come before this Court on the Joint Motion of CAWCD  
11 and the United States for Stay and Approval of Stipulation and having considered  
12 all of the files and records in this matter along with the matters discussed during  
13 the April 11, 2000 hearing on the motion and with counsel for the United States  
14 and the Central Arizona Water Conservation District ("CAWCD") having executed  
15 the Stipulation Regarding a Stay of Litigation, Resolution of Issues During Stay  
16 and for Ultimate Judgment Upon the Satisfaction of Conditions ("Stipulation") on  
17 May 2, 2000, and May 3, 2000, respectively, and with no party objecting and  
18 good cause appearing, IT IS HEREBY ORDERED, as follows:

19 1. The original Stipulation is ordered to be filed.

20 2. The above captioned case is stayed for a period of three years from  
21 the date of this Order, hereinafter "Expiration Date."

22 3. Pursuant to paragraph 8(e) of the Stipulation, during the period of  
23 the litigation is stayed, the Stipulation shall be effective as between the United  
24 States and CAWCD, and CAWCD and the United States shall operate and  
25 relevant payments and credits will be adjusted and made pursuant to the  
26 Stipulation. The parties' respective positions in the litigation will not be

1 prejudiced by CAWCD and the United States operating in accordance with the  
2 Stipulation while the litigation is stayed, if a settlement ultimately is not achieved.  
3 The Court shall, pursuant to the terms of the Stipulation, maintain jurisdiction  
4 over the administration of the Stipulation.

5 4. Upon the occurrence of all conditions within the Stipulation, the  
6 Parties shall notify the Court and move for the entry of final judgment consistent  
7 with the Stipulation. Objections to the entry of final judgment, if any, can be  
8 made in opposition to the motion.


9 5. If the conditions articulated within paragraph 8 of the Stipulation are  
10 not satisfied by the Expiration Date, the Stipulation will automatically terminate  
11 and litigation will resume as provided for in paragraph 8(f) of the Stipulation.

12 6. Pursuant to paragraph 8(f) of the Stipulation, either the United  
13 States or CAWCD may petition the Court to terminate the stay prior to the  
14 Expiration Date.

15 7. In the event that litigation resumes, no penalties will be assessed  
16 against CAWCD for any underpayments that might be determined to relate to the  
17 period from the date of this Order until litigation resumes or the Expiration Date,  
18 whichever occurs first.

19 8. To the extent required by Rule 2.7(b) of the Local Rules of Practice,  
20 during the period the litigation is stayed, all other relevant and operative  
21 provisions of the Stipulation not specifically mentioned herein are hereby  
22 approved and so ordered.

23 DONE IN OPEN COURT this 9 day of May, 2000.

24   
25 The Honorable Earl H. Carroll  
26 United States District Court Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT, a municipal  
corporation of the State of Arizona,

Plaintiff,

v.

//

No. CIV 95-625-TUC-WDB(EHC)  
No. CIV 95-1720-PHX-EHC  
(Consolidated Action)

STIPULATION REGARDING A  
STAY OF LITIGATION,

1 UNITED STATES OF AMERICA, UNITED )  
2 STATES DEPARTMENT OF THE INTERIOR, )  
3 BUREAU OF RECLAMATION; BRUCE )  
4 BABBITT, Secretary of the Interior; PATRICIA )  
5 J. BENEKE, Assistant Secretary of the )  
6 Interior; ELUID L. MARTINEZ, Commissioner of )  
7 Reclamation; ROBERT JOHNSON, )  
8 Regional Director, Lower Colorado Region, )  
9 United States Bureau of Reclamation, )

10 Defendants. )

11 UNITED STATES OF AMERICA )

12 Counterclaimant, )

13 v. )

14 CENTRAL ARIZONA WATER )  
15 CONSERVATION DISTRICT, a municipal )  
16 corporation of the State of Arizona, )

17 Counterdefendant. )

RESOLUTION OF ISSUES  
DURING THE STAY AND FOR  
ULTIMATE JUDGMENT UPON  
THE SATISFACTION OF  
CONDITIONS

18 Plaintiff and Counter Defendant Central Arizona Water Conservation District ("CAWCD"),  
19 Defendants and Counterclaimants the United States of America, et al. ("United States"), and  
20 Intervenor the Tohono O'odham Nation, Cities of Phoenix, Tucson, Tempe, Scottsdale, Mesa,  
21 Peoria, Glendale, Chandler and Goodyear, and the Central Arizona Irrigation and Drainage  
22 District (hereinafter, collectively referred to as "Parties") agree that judgment may be entered in  
23 this action in accordance with the following Stipulation:

24 1. This Court has jurisdiction over the Parties and the subject matter of this action.

25 2. The First Claim for Relief in CAWCD's Complaint for Declaratory and Injunctive  
26 Relief ("Complaint") filed on or about July 10, 1995, in this action and the First Claim for Relief  
27 in the United States First Amended Counterclaim ("Counterclaim") filed on or about August 19,  
28 1998, shall be resolved as follows:

(a) Notwithstanding the disputed provisions of Contract No. 14-06-W-245  
entitled "Contract between the United States and the Central Arizona Water Conservation District  
for Delivery of Water and Repayment of Costs of the Central Arizona Project" dated  
December 1, 1988 ("1988 Contract"), CAWCD's repayment obligation for the Water Supply

1 System and the New Waddell and Modified Roosevelt Dams ("Regulatory Storage") Stages of  
2 the Central Arizona Project ("CAP") shall be fixed at \$1,650,000,000, with annual payments to  
3 be made by CAWCD in conformance with the annual payment schedule set forth as Exhibit "A"  
4 hereto which is incorporated by reference herein as if set forth in full. The repayment obligation  
5 and Exhibit "A" are premised on a total allocation of 665,224 acre feet of Project Water for use  
6 by Indian tribes in Arizona.

7 (b) To the extent Congress provides appropriations therefor, the United States  
8 will bear the financial obligation of completing all remaining features of the Water Supply System  
9 and Regulatory Storage Stages of the CAP, including any and all environmental mitigation  
10 construction work necessary to comply with Biological Opinion Number 2-21-90-F-119, dated  
11 April 15, 1994, dealing with the Transportation and Delivery of Central Arizona Project Water,  
12 to the Gila River Basin (Hassayampa, Agua Fria, Salt, Verde, San Pedro, Middle and Upper  
13 Gila Rivers, and Associated Tributaries) in Arizona and New Mexico ("Gila River Biological  
14 Opinion"); and Biological Opinion Number 2-21-91-F-706, dated May 1999 (Draft), dealing  
15 with the Impacts of the Central Arizona Project (CAP) to Gila Topminnow in the Santa Cruz  
16 River Basin through Introduction and Spread of Nonnative Aquatic Species ("Santa Cruz  
17 Biological Opinion"), without any expenses being charged CAWCD except for those accounted  
18 for in Exhibit "A." Remaining features of the Water Supply System and Regulatory Storage  
19 Stages of the CAP to be completed shall be limited to those features identified in Exhibit "B"  
20 hereto which is incorporated by reference as if set forth in full. Exhibit "B" further identifies  
21 which remaining features of the Water Supply and Regulatory Storage Stages of the CAP will be  
22 completed by the United States and which will be completed, pursuant to subparagraph 6(c)(iii)  
23 of this Stipulation, by CAWCD. In the event that additional authorizations or appropriations are  
24 needed to capitalize or complete the items identified in Exhibit "B," then CAWCD agrees to  
25 support these authorizations and appropriations including any the Secretary may request for the  
26 capitalization and payment of environmental mitigation work identified in Exhibit "B." The  
27 \$1,650,000,000 repayment obligation will not be adjusted regardless of the outcome of litigation  
28 dealing with either the Gila River Biological Opinion or the Santa Cruz Biological Opinion.

1 (c) In addition to the provisions of Article 9.3(e) of the 1988 Contract,  
2 CAWCD and the United States shall consult prior to the construction of any CAP feature, facility  
3 or stage, of which costs may be allocable to CAWCD, other than the Water Supply System Stage  
4 and the Regulatory Storage Stage, and, except as provided in Exhibit "B" hereto, about such  
5 construction, relevant costs and any cost allocation associated with that construction.

6 (d) Nothing herein is intended to preclude CAWCD from supporting or the  
7 Secretary from seeking authorizations and appropriations to cover all or part of the funds that  
8 may be necessary to pay for major replacements of CAP features or facilities.

9 (e) CAWCD agrees to support authorizations and appropriations the Secretary  
10 may request for CAP Indian distribution systems authorized pursuant to Section 301(a)(9) of the  
11 Colorado River Basin Project Act, 43 U.S.C. § 1521(a)(9).

12 3. The Second and Fifth Claim for Relief in the Complaint and the Second Claim for  
13 Relief in the Counterclaim shall be resolved as follows:

14 (a) Notwithstanding the 1988 Contract (Articles 9.1, 9.2(e), 9.3(d) and 9.10),  
15 the repayment schedule set forth in Exhibit "A" hereto shall constitute CAWCD's repayment  
16 obligation and all prior billings shall be recalculated and adjusted to reflect the payments  
17 provided for in Exhibit "A." These recalculations and adjustments, through the December 1999  
18 bill, are shown on Exhibit "A-1" which is incorporated by reference as if set forth in full. In this  
19 recalculation and adjustment, bills have been calculated without penalties being assessed against  
20 CAWCD but with any over- or under-payments bearing interest at the Arizona State Treasury  
21 investment rates for relevant periods. Exhibit "A-1" also reflects appropriate recalculations and  
22 adjustments to account for the credits provided for in paragraph 6 of this Stipulation. To the  
23 extent that Exhibit "A-1" reflects a net credit to CAWCD following the January 2000 payment,  
24 that credit shall be carried forward with interest at the Arizona State Treasury investment rate and  
25 shall be applied to future Exhibit "A" payments due to the United States from CAWCD as needed  
26 after application of all revenues and credits described in subparagraph 6(c).

27 (b) Notwithstanding Article 9.3(d) of the 1988 Contract, 73% of the repayment  
28 obligation established in subparagraph 2(a) of this Stipulation shall be interest bearing, and 27%



1 shall be non-interest bearing. This agreed-upon interest bearing split is reflected in the payment  
2 schedule in Exhibit "A" and shall be in effect throughout the repayment period.

3 4. The Third and Fourth Claims for Relief in the Complaint and the Third and Fourth  
4 Claims for Relief in the Counterclaim shall be resolved as follows:

5 (a) The provisions of this paragraph of the Stipulation shall apply only to how  
6 CAWCD determines charges for delivery of Project Water under long-term contracts,<sup>1</sup>  
7 specifically: Fixed OM&R Costs and Charges and Pumping Energy Costs and Charges for  
8 providing Project Water service for any Indian Tribe or for any other Federal purpose. This  
9 paragraph shall not govern, in any way, how either Fixed OM&R Costs and Charges or  
10 Pumping Energy Costs and Charges are determined for any other purposes. If CAWCD uses an  
11 alternate method of calculating either Fixed OM&R Costs and Charges or Pumping Energy Costs  
12 and Charges which results in a lesser cost or charge (exclusive of any water service subcontract  
13 or water service capital charges) for Municipal and Industrial ("M&I") priority water or  
14 agricultural priority water under long-term subcontracts, then the lesser cost or charge will be  
15 billed instead of the costs or charges that would otherwise be billed under the provisions of this  
16 paragraph.

17 (b) For the purposes of this Stipulation, "Fixed OM&R Costs" shall mean: all  
18 expenses incurred by CAWCD for the care, operation, maintenance, and replacement of  
19 "Transferred Works" as defined in Article 5.18 of the 1988 Contract and identified pursuant to  
20 Article 6(a) of Contract No. 7-07-30-W0167, dated August 5, 1987 ("O&M Transfer  
21 Contract") (sometimes referred to as "OM&R-related activities") and for the transmission of  
22 energy necessary to deliver Project Water that are not otherwise included in Pumping Energy  
23 Costs. All costs incurred by Reclamation and reimbursed by CAWCD pursuant to  
24 paragraph 8.2.1 of the Operating Agreement attached hereto as Exhibit "C" and hereby fully  
25  
26

27 <sup>1</sup> As used in this Stipulation, a long-term contract or subcontract means one having a term that extends to  
28 2043 or beyond and any contract or subcontract resulting from the transfer, assignment or lease of such contract  
or subcontract, or part thereof, or of a Project Water entitlement thereunder.

1 incorporated herein by reference<sup>2</sup> may be included in Fixed OM&R Costs as may the costs in  
2 excess of the funds provided in subparagraph 6(e)(ii) of establishing a reserve to cover the costs  
3 associated with major repair or replacement of CAP features. CAWCD shall use its business  
4 judgment to allocate joint costs that support both OM&R-related activities and other activities and  
5 may include in Fixed OM&R Costs only the portion of joint costs allocable to OM&R-related  
6 activities. "Fixed OM&R Charge" shall mean the charge per acre-foot of Project Water imposed  
7 by CAWCD each year for the recovery of the Fixed OM&R Costs of water deliveries.

8 (c) "Pumping Energy Costs" shall mean all of CAWCD's costs for the  
9 generation or acquisition of energy necessary to deliver Project Water each year. "Pumping  
10 Energy Charge" shall mean the charge per acre-foot of Project Water imposed by CAWCD each  
11 year for the recovery of the Pumping Energy Costs of water deliveries.

12 (d) Pursuant to subparagraph 4(a) above, CAWCD shall annually in advance of  
13 Project Water deliveries determine the Fixed OM&R Charge and Pumping Energy Charge for  
14 Project Water service for the following year.

15 (i) CAWCD's Fixed OM&R Charge shall not be more than the amount  
16 determined by dividing CAWCD's estimated Fixed OM&R Costs for the following year by the  
17 total amount of Project Water that CAWCD estimates will actually be delivered through Project  
18 Works in the following year.

19 (ii) CAWCD's Pumping Energy Charge shall not be more than the  
20 amount determined by dividing CAWCD's estimated Pumping Energy Costs for the following  
21 year by the total amount of Project Water that CAWCD estimates will actually be delivered  
22 through Project Works in the following year.

23 (iii) Without regard to any prior year's adjustment as may be provided  
24 in subparagraphs 4(e) and (f) below, charges for any delivery of Project Water for Federal  
25 purposes shall be no more than the sum of the Fixed OM&R Charge and the Pumping Energy  
26 Charge as defined in subparagraphs 4 (b) and (c) herein.

27  
28 <sup>2</sup> The exhibits and attachments to the original Exhibit C, as executed by the United States and  
CAWCD are not appended to Exhibit C hereto.

1 (e) All past fixed OM&R and pumping energy charges paid by the United  
2 States on behalf of the Ak-Chin Indian Community, for Roosevelt Dam construction, and for  
3 San Carlos Apache Tribe/Phelps Dodge exchange water shall be fairly reconciled with actual  
4 past fixed OM&R and pumping energy costs and shall not include the costs in paragraph 14  
5 below nor shall it include the costs of establishing a reserve to cover the costs associated with the  
6 major repair or replacement of CAP features referred to in subparagraph 4(b) above, with  
7 overpayments bearing interest at the Arizona State Treasury investment rate for the relevant  
8 periods, being credited against future charges for deliveries for Federal purposes beginning with  
9 amounts due in the year 2001 or refunded at United States option. The accounting methodology  
10 used in performing the foregoing reconciliation will be consistent with the methodology used in  
11 the applicable years to assess the charge. CAWCD will provide the United States an accounting  
12 of the adjustment. Any disputes over the reconciliation dealt with in this subparagraph shall be  
13 dealt with pursuant to the ADR procedures set forth in paragraph 11 herein.

14 (f) To the extent Congress provides appropriations therefor, the United States  
15 shall, in advance of Project Water deliveries, pay or provide for payment of all Fixed OM&R  
16 Charges and Pumping Energy Charges associated with the delivery of Project Water, whether  
17 directly or by exchange, for use by any Indian tribe or its lessees or for any other Federal  
18 purpose. CAWCD shall bill the United States for such Charges monthly, based upon CAWCD's  
19 annual estimates of these Charges and annual water delivery schedules. The United States shall  
20 pay or provide for payment within 30 days of billing. The payment of such Charges directly to  
21 CAWCD by lessees or other entities shall discharge, to the extent of the payments made, the  
22 obligation of the United States. Within 30 days of the completion of audited financial statements  
23 each year, but in no case later than May 30, CAWCD shall adjust Fixed OM&R Charges and  
24 Pumping Energy Charges to reflect actual Fixed OM&R Costs and Pumping Energy Costs, with  
25 overpayments refunded to or underpayments paid by the United States within 30 days of the  
26 recalculation. CAWCD will provide the United States an accounting of the adjustment. The first  
27 adjustment shall be in 2001 for charges assessed in the year 2000.

28 //

1 (g) The United States annually shall have the right, upon 90 days advance  
2 written notice, to audit CAWCD's administration of Fixed OM&R and Pumping Energy Costs  
3 and Charges. In the case of a dispute over the type of charge or the amount that is billed, the  
4 United States shall pay or provide for payment of the full amount billed, but shall do so under  
5 protest and CAWCD and the United States shall follow the ADR procedures set forth in  
6 paragraph 11 herein.

7 (h) In those situations in which a lessee of Project Water under contract to an  
8 Indian tribe has an obligation to pay Fixed OM&R Charges or Pumping Energy Charges  
9 associated with the delivery of Project Water, whether directly or by exchange, nothing herein  
10 shall relieve such lessee from the obligation to pay such charges. The United States shall direct  
11 such lessee to pay all such charges directly to CAWCD. Nothing herein shall waive any right of  
12 the United States to repayment of Fixed OM&R Charges or Pumping Energy Charges from any  
13 Indian tribe where an obligation exists for such tribe to pay its own Fixed OM&R Charges or  
14 Pumping Energy Charges. Nothing herein is intended to create an obligation on the part of the  
15 United States to pay for a lessee where that obligation does not otherwise exist.

16 5. The Fifth and Sixth Claims for Relief in the Counterclaim shall be resolved as  
17 follows:

18 (a) For purposes of this Stipulation, "Project Water" shall mean:

19 (1) all Colorado River water to which Arizona is entitled under the U.S.  
20 Supreme Court decree in *Arizona v. California* that the CAP Water Supply System is capable of  
21 delivering:

22 (i) after first providing for satisfaction of those rights described  
23 in Article 8.7(b)(i) and (ii) of the 1988 Contract, and

24 (ii) subject to the provisions of Article 8.7(c) of the 1988  
25 Contract;

26 (2) water available from Central Arizona Project dams and reservoirs;

27 (3) return flows captured by the Secretary for Project use;

28 //

1 (4) water delivered to water users in Arizona, through the Project  
2 Works, in exchange for water delivered to users in New Mexico from or by means of the Project  
3 Works;

4 (5) Colorado River water acquired from the Yuma Mesa Division of the  
5 Gila Project pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328),  
6 as amended on October 19, 1984 (Public Law 98-530);

7 (6) Colorado River water acquired from the Wellton-Mohawk Irrigation  
8 District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement  
9 Act of 1988 (Public Law 100-512); and

10 (7) any additional water not included in (i) or (ii) above that is required  
11 to be delivered by the Secretary through Project Works pursuant to the Southern Arizona Water  
12 Rights Settlement Act of 1982 (Title III of Public Law 97-293) or pursuant to any subsequent act  
13 of Congress.

14 (b) For purposes of this Stipulation, the water supply associated with  
15 modification of Roosevelt Dam shall not be counted as Project Water.

16 (c) CAWCD shall be entitled to divert all Project Water for the benefit of Project  
17 Water users.

18 (d) Excess Water shall be dealt with as follows:

19 (1) "Excess Water" is all Project Water that is in excess of the amounts  
20 used, resold, or exchanged pursuant to long-term contracts and subcontracts for Project Water  
21 service.

22 (2) CAWCD shall have the exclusive right in its discretion to sell or use  
23 all Excess Water for any authorized purpose of the CAP.

24 (3) Excess Water shall be delivered through Project Works for use on  
25 Indian lands or non-Indian lands directly or by exchange as permitted by law.

26 (4) Contracts for the sale or use of Excess Water under this paragraph  
27 may be made pursuant to multi-year programs established by CAWCD. Such contracts shall not  
28 exceed a term of one year, but may contain a provision for automatic renewal without further

1 action by the parties thereto. Such automatic renewal shall not give rise to a right in any  
2 subsequent year to receive Excess Water, nor preclude future long-term contracts or subcontracts  
3 nor limit the terms thereof, including in implementation of Indian water right settlements up to a  
4 total for all long-term contracts and subcontracts of 1.415 million acre-feet. By its terms,  
5 Subarticle 8.8(b) of the 1988 Contract does not apply to contracts for Excess Water service under  
6 this paragraph; however, such contracts entered into after the filing of this Stipulation shall  
7 comply substantially with the provisions of Subarticles 8.8(b)(i), 8.8(b)(ii), 8.8(b)(iii),  
8 8.8(b)(iv), 8.8(b)(viii) and 8.8(b)(x). Pursuant to 43 U.S.C. § 1524(b)(1), all contracts that  
9 conform to the provisions of this paragraph shall be deemed approved by the Secretary. The  
10 Secretary must be a party to or must expressly approve all contracts for Project Water service  
11 other than those which conform to the provisions of this paragraph.

12 (5) CAWCD may, at its discretion, establish programs for the sale of  
13 Excess Water under this paragraph that provide for various categories and charges for Excess  
14 Water. Through 2030, in any year in which Excess Water is offered for sale under this  
15 paragraph, any Indian contractor of Project Water service or the United States shall have the right  
16 to purchase Excess Water from any Excess Water category not established exclusively for the use  
17 of non-Indian agriculture or the Arizona Water Banking Authority, at the same charge and upon  
18 the same terms and conditions as for other users in that category. Any water available within an  
19 exclusive category that is not fully used by eligible participants in that category shall be made  
20 available to other Excess Water categories. After 2030, in any year in which Excess Water is  
21 offered for sale under this paragraph, any Indian contractor of Project Water service or the  
22 United States shall have the right to purchase Excess Water from any Excess Water category at  
23 the same charge and upon the same terms and conditions as for other users in that category.

24 (6) Nothing in this paragraph shall preclude the United States or any  
25 Indian tribe from entering into a contract with the Arizona Water Banking Authority.

26 (7) Excess Water purchased under this paragraph may not be resold or  
27 transferred, except that a purchaser may enter into an arrangement with a groundwater savings  
28 facility allowed under state law to store Excess Water.

1 (8) This paragraph does not constitute or require approval by the  
2 Secretary of any particular Excess Water program.

3 6. The Fifth Claim for Relief in the Complaint is further dealt with and the Seventh,  
4 Eighth, Ninth, Tenth, Eleventh, and Twelfth Claims for Relief in the Counterclaim are resolved  
5 as follows:

6 (a) The Lower Colorado River Basin Development Fund ("LBDF"),  
7 established pursuant to Section 403 of the Colorado River Basin Project Act, 43 U.S.C.  
8 § 1543, shall be administered, and past accountings adjusted as follows:

9 (i) Exhibit "A-1" reflects a credit of \$127,772,946 for all past  
10 payments made by CAWCD pursuant to annual billings issued by the United States since 1993.

11 (ii) Exhibit "A-1" reflects a credit in the amount of \$31,678,364 for  
12 CAWCD's advance of funds for the United States' purchase of the Harquahala Valley Irrigation  
13 District's CAP allocation for use in Indian water rights settlements.

14 (iii) Exhibit "A-1" reflects credits totaling \$35,942,266 for expenditures  
15 made through December 31, 1999 by CAWCD to correct CAP construction deficiencies.

16 (iv) Exhibit "A-1" reflects a credit in the amount of \$2,969,251 for the  
17 value of CAWCD's unreimbursed employee-related costs accrued prior to 1994.

18 (v) Exhibit "A-1" reflects a credit in the amount of \$112,999,485 for  
19 revenues credited to or deposited in the LBDF from the sale of Navajo Surplus Power through  
20 December 31, 1999.

21 (vi) Exhibit "A-1" reflects credits totaling \$32,193,263 for revenues  
22 credited to or deposited in the LBDF associated with the Hoover 4.5-mill surcharge through  
23 December 31, 1999.

24 (vii) Exhibit "A-1" reflects credits totaling \$599,000 for net  
25 miscellaneous revenues credited to or deposited in the LBDF through December 31, 1999.

26 (viii) Exhibit "A-1" reflects offsets totaling \$1,238,600 for Reclamation  
27 oversight costs except for those described in paragraph 14 below.

28 //

1 (b) The amounts set forth in subparagraph 6(a) above shall remain subject to  
2 verification and audit for a period of one year from the date of this Stipulation, and CAWCD and  
3 the United States shall work diligently with each other to complete this verification within this  
4 period of time. In the event of a dispute associated with these verifications and audits, the parties  
5 shall follow the ADR procedures set forth in paragraph 11.

6 (c) The LBDF shall be further administered as follows:

7 (i) All power revenues, net of generation and associated administrative  
8 costs, including all revenues from Navajo Surplus Power sales (other than those pledged to the  
9 payment of bonds issued by CAWCD and except as provided in subparagraph 6(e)(ii) hereof),  
10 the Hoover 4.5-mill surcharge,<sup>3</sup> and, after June 1, 2005, the Parker Davis 4.5-mill surcharge,  
11 shall be placed in the LBDF and credited, in the relevant years, against future Exhibit "A"  
12 payments due to the United States from CAWCD prior to their utilization for any other purpose.

13 (ii) All miscellaneous CAP revenues shall be credited, in relevant years,  
14 against future Exhibit "A" payments due to the United States from CAWCD, including, but not  
15 limited to, all revenues from the use, rental, sale, exchange or inter-agency or inter-governmental  
16 transfer of CAP lands or other property. In the case of exchanges or inter-agency or inter-  
17 governmental transfers of real property, credits for transactions which take place after the date of  
18 the execution of this Stipulation shall equal the greater of cost or the fair market value of such  
19 land or property at the time of the exchange. Fair market value will be determined by  
20 independent appraisal funded out of proceeds of the sale or, if no sale takes place, funded as  
21 reimbursable oversight costs. Where reimbursable costs are not associated with the acquisition  
22 of property, then the provisions of this subparagraph shall not apply to the disposal of that  
23 property but, rather, the statutory provisions associated with the acquisition and disposal of that  
24 property shall govern how the value of that property shall be accounted for.

25 (iii) A credit against Exhibit "A" payments due to the United States from  
26 CAWCD shall be made annually based upon the agreed-upon costs associated with the agreed  
27

28 <sup>3</sup> This subparagraph does not apply to the 2.5-mill surcharge to purchasers in California and Nevada.



1 work undertaken by CAWCD, pursuant to Exhibit "B," to further correct CAP construction  
2 deficiencies. Any recoveries on claims made by the United States against CAP siphon  
3 construction related contractors shall be divided 35% to CAWCD and 65% to the United States.  
4 CAWCD's share of such recoveries, if any, shall be applied as a credit against the Exhibit "A"  
5 payments due to the United States from CAWCD. The United States share of such recoveries, if  
6 any, shall not be available for credit against Exhibit "A" payments due to the United States from  
7 CAWCD. Notwithstanding the foregoing, all decisions regarding claims including litigation and  
8 settlement against CAP siphon construction contractors shall be within the sole discretion of the  
9 United States and shall not be subject to challenge by CAWCD. However, the United States  
10 shall consult with CAWCD regarding proposed settlement of such claims.

11 (iv) The United States shall apply all revenues described in  
12 paragraphs 6(c)(i) and 6(c)(ii) against the current Exhibit "A" payment due to the United States  
13 from CAWCD before applying any of the credits described in paragraph 6(c)(iii). To the extent  
14 that any of the credits described in paragraph 6(c)(iii) are not needed to satisfy the current year's  
15 Exhibit "A" payment due to the United States from CAWCD, those excess credits shall be carried  
16 forward for application against future Exhibit "A" payments due to the United States from  
17 CAWCD until exhausted, with such excess credits bearing interest at the Arizona State Treasury  
18 investment rate.

19 (d) Costs associated with the miscellaneous revenues addressed in  
20 subparagraph 6(c)(ii) shall be billed as part of the work plan referred to in Exhibit "C." In the  
21 event of a dispute with respect to the billing provided for herein, CAWCD and the United States  
22 shall follow the ADR procedures set forth in paragraph 11.

23 (e) (i) Nothing in this Stipulation shall affect the establishment, collection,  
24 payment and application of the Additional Rate Component charged for Navajo Surplus Power  
25 and used for the payment of bonds previously issued by CAWCD (hereinafter "Outstanding  
26 Bonds"). CAWCD and the United States acknowledge that the amounts collected from such  
27 Additional Rate Component are properly held by the Trustee designated by CAWCD and  
28 //

1 properly used to pay debt service, costs, and rebate obligations associated with such Outstanding  
2 Bonds and to fund reserves therefor.

3 (ii) Except as expressly provided in this subparagraph (ii), nothing in  
4 this Stipulation shall affect the establishment, collection, payment and application of the Capacity  
5 Charge (including the Additional Rate Component) charged for Navajo Surplus Power (the  
6 "Capacity Charge") as provided in the following documents: Reclamation Agreement No. O-  
7 CS-30-P1076, as amended by the First Amendment thereto (as amended, the "Interagency  
8 Agreement"); Contracts Nos. 89-BCA-10287 and 91-PAO-10404 for Long Term Sale of Navajo  
9 Surplus Power (collectively, the "Power Sales Contracts"), the Bond Indenture dated as of  
10 May 1, 1990, by and between CAWCD and Citibank (Arizona) as trustee (together with its  
11 successors, the "Bond Trustee"), as amended by the First Supplement to Bond Indenture dated  
12 as of March 1, 1993, by and between CAWCD and the Bond Trustee, and the Bond Indenture  
13 dated as of August 1, 1991, by and between CAWCD and the Bond Trustee, as supplemented  
14 by the First Supplement to Bond Indenture dated as of February 1, 1994, by and between  
15 CAWCD and the Bond Trustee (collectively, the "Bond Indentures"). This Stipulation does not  
16 impose on the United States and the United States does not hereby assume any obligations under  
17 the Bond Indentures. Notwithstanding the provisions of the Bond Indentures and the  
18 Interagency Agreement, all revenues from the Capacity Charge and all monies held by the Bond  
19 Trustee under the Bond Indentures, to the extent such revenues and monies are not necessary to  
20 pay debt service, costs, or rebate obligations associated with Outstanding Bonds or to fund  
21 reserves therefor, may be paid, at CAWCD's option and in lieu of payment to Reclamation for  
22 deposit in the LBDF, to CAWCD to be used by CAWCD solely to establish a reserve to cover  
23 the costs associated with major repair or replacement of CAP features. To accomplish this result,  
24 the Bond Trustee may be directed by CAWCD to pay such amounts directly to CAWCD from  
25 time to time and, whenever it is no longer necessary to have the Capacity Charge paid to the  
26 Bond Trustee under the Bond Indentures, CAWCD may designate itself or any institutional  
27 trustee acting on CAWCD's behalf, as trustee to receive the Capacity Charge. In consideration  
28 for this, CAWCD shall pay the United States \$12,000,000 on or before December 31, 2011.

1 which payment shall be applied as a prepayment of the last \$12,000,000 due of the non-interest  
2 bearing portion of CAWCD's Exhibit "A" Repayment Obligation. The foregoing applies only to  
3 revenues from the sale of Navajo Surplus Power prior to October 1, 2011.

4 (f) CAWCD shall annually have the right, upon 90 days advance written  
5 notice, to audit the United States administration of the LBDF. To the extent that a dispute arises  
6 over how the United States administers the LBDF, and no mutually agreeable resolution can be  
7 achieved, CAWCD and the United States shall follow the ADR procedures set forth in  
8 paragraph 11 herein.

9 (g) (i) CAWCD will pay administration, oversight and OM&R costs billed  
10 by the United States as provided in the Operating Agreement (Exhibit "C").

11 (ii) CAWCD will not dispute the categories of costs specified in  
12 paragraph 8.3 of the Operating Agreement, but may dispute the amount of such costs billed by  
13 the United States. CAWCD may dispute any cost billed that is not within the category of costs  
14 specified in paragraph 8.3 of the Operating Agreement. If a bill is disputed, CAWCD shall,  
15 after noting its protest, nonetheless pay the disputed bill, and CAWCD and the United States  
16 shall follow the ADR procedures set forth in paragraph 11 below with respect to the disputed  
17 bill. If CAWCD fails to pay the full amount billed, and the United States prevails, in whole or in  
18 part, in the ADR process or in litigation, CAWCD shall pay or lose credit in the applicable  
19 amount with interest and/or penalties provided for in Article 9.10 of the 1988 Contract. If  
20 CAWCD prevails, in whole or in part, in the ADR process or in litigation, the United States shall  
21 repay or credit CAWCD with the full amount awarded plus interest at the Arizona State Treasury  
22 investment rate for relevant periods.

23 (h) Beginning January 1, 2000, net revenues in the LBDF that are available as  
24 a credit toward CAWCD's repayment obligation shall be accounted for and quantified by  
25 Reclamation on a quarterly basis. On the first day of each quarter following the receipt of the  
26 revenues, Reclamation shall calculate an offsetting credit calculated at 1/4 of 3.342% (simple  
27 interest) on the prior quarter's collected revenues. The additional offsetting credit shall be  
28 recorded at the end of each quarter. Reclamation shall provide CAWCD a quarterly report of

1 LBDF revenues and credits calculated under this paragraph. Each year the accumulated balance  
2 of the additional offsetting credit, if any, shall be applied against the annual payment due on the  
3 following January 15. The offsetting credits dealt with in this subparagraph 6(h) are for the  
4 purpose of offsetting interest, if any, that would otherwise be due from CAWCD. The offsetting  
5 credits shall have no effect on the principal payments that are otherwise due from CAWCD.

6 (i) Article 10.3 of the 1988 Contract requires the establishment of certain  
7 reserve funds. Article 10.3(a) provides for the establishment of a \$4,000,000 emergency  
8 OM&R reserve fund. Article 10.3(b) provides for the establishment of a \$40,000,000  
9 repayment reserve fund. Notwithstanding the limitations on the utilization of the reserve funds  
10 that may otherwise exist in the 1988 Contract, CAWCD may, at its reasonable discretion, utilize  
11 monies in either fund for the purpose of meeting the purposes identified in Article 10.3(a)(iv) of  
12 the 1988 Contract.

13 7. CAWCD and the United States have executed an Operating Agreement  
14 (Exhibit "C") setting forth the terms and conditions for performing OM&R-related activities.

15 8. (a) As a condition to the effectiveness of this Stipulation, the following shall  
16 have been addressed, in a manner satisfactory to the Secretary<sup>4</sup> and the Arizona Department of  
17 Water Resources, including any necessary actions by Congress:

18 (i) a final Gila River Indian Community water rights settlement fully  
19 enforceable in accordance with the enforceability date provisions of such settlement;

20 (ii) an amendment to the Southern Arizona Water Rights Settlement Act  
21 of 1982 fully enforceable in accordance with the enforceability date provisions of such  
22 amendment;

23 //

24 //

25 //

26  
27  
28 <sup>4</sup> Any settlement referenced herein involving ongoing litigation shall also be subject to the Attorney  
General's authority under 28 U.S.C. § 519.

1 (iii) a final San Carlos Apache Tribe water rights settlement fully  
2 enforceable in accordance with the San Carlos Apache Tribe Water Rights Settlement Act of  
3 1992, P.L. 102-575, 106 Stat. 4740, as amended in 1994, 1996 and 1997, and the  
4 enforceability date provisions of such settlement;

5 (iv) the allocation of Project Water for use by Indian tribes in Arizona  
6 such that the total amount allocated for Federal purposes shall be 665,224 acre feet; and

7 (v) 65,647 acre feet of M&I Project Water and approximately  
8 100,000 acre feet of non-Indian agricultural Project Water shall be or shall have been allocated to  
9 or for the benefit of various Arizona M&I or non-Indian agricultural water providers.

10 (b) As a condition to the effectiveness of this Stipulation, any authorizations or  
11 appropriations necessary to fund construction work as set forth in Exhibit "B" to comply with the  
12 Gila River Biological Opinion and the Santa Cruz Biological Opinion have been obtained from  
13 Congress. Nothing in this Stipulation is intended to prejudice the positions of CAWCD or the  
14 United States in any litigation associated with these biological opinions.

15 (c) As a condition to the effectiveness of this Stipulation, the United States shall  
16 amend the Navajo Power Marketing Plan of December 1, 1987 ("Plan") to provide for the  
17 establishment and collection of rates for the sale or exchange of Navajo Surplus Power after  
18 September 30, 2011, which optimize the availability and use of revenues for the purposes of  
19 subparagraphs 6(c) and 8(d), in a manner consistent with the Hoover Power Plant Act of 1984  
20 (Pub. L. No. 98-381), and shall market and exchange Navajo Surplus Power after  
21 September 30, 2011, in accordance with such amended Plan.

22 (d) (i) As a condition to the effectiveness of this Stipulation, Congress  
23 shall have provided in a manner satisfactory to the Secretary, the Attorney General and CAWCD  
24 a means by which:

25 (1) A firm funding stream not to exceed the annual amount of  
26 LBDF revenues previously credited against CAWCD's annual Exhibit "A" repayment obligation  
27 is available for, in order of priority:

28 //

1 (i) First, for Fixed OM&R Charges under long-term  
2 contracts payable by the United States pursuant to subparagraph 4(f) and subject to  
3 subparagraph 4(h);

4 (ii) Second, for costs authorized by Congress to be paid  
5 to the Gila River Indian Community pursuant to the Gila River Indian Community water rights  
6 settlement;

7 (iii) Third, in addition to funds made available through  
8 annual appropriations, for any of the following, without regard to any particular priority:

9 1) After enactment of the Gila River Indian  
10 Community Settlement Act, costs associated with the construction of distribution systems  
11 associated with the Gila River Indian Community's Master Contract with the United States for  
12 Repayment of Construction Costs and Operation, Maintenance and Replacement of A Water  
13 Distribution System (#6-07-30-W0345) dated July 20, 1998;

14 2) Costs associated with the construction of  
15 distribution systems required to implement the provisions of § 3707(a)(1) of the San Carlos  
16 Apache Tribe Water Rights Settlement Act of 1992 (Pub. L. No. 102-575, 106 Stat. 4740 as  
17 amended);

18 3) Costs associated with construction of  
19 distribution systems required to implement the provisions of §§ 303(a)(1) and (2) of the  
20 Southern Arizona Water Rights Settlement Act of 1982 (Pub. L. No. 97-293, 96 Stat. 1279);  
21 and

22 4) Other costs authorized by Congress  
23 (including any costs to construct distribution systems but not including costs otherwise payable  
24 by non-Federal, non-Indian parties) pursuant to any Arizona Indian water rights settlement act  
25 enacted after the date of this Stipulation. It is understood, however, that the actual terms of any  
26 such settlement will need to be negotiated by the current or a future Administration and  
27 subsequently enacted or amended by Congress on a case-by-case basis.

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1 (iv) Fourth, in addition to funds made available through  
2 annual appropriations, for costs associated with the construction of on-reservation facilities  
3 enabling the following tribes to use the CAP water for which they have contracted: Yavapai  
4 Apache (Camp Verde), Tohono O'odham Nation (Chuichu), Pascua Yaqui, and Tonto Apache;  
5 *Provided*, that in the event of a water rights settlement act authorizing such construction in the  
6 case of any of the foregoing tribes, the provisions of subparagraph 8(d)(i)(1)(iii) above shall  
7 apply to such tribe or tribes; *Provided further* that, after 2030 and through 2046, any of the  
8 foregoing tribes not having facilities enabling them to use the CAP water for which they have  
9 contracted or a final water rights settlement act may elect, in lieu of any construction funding by  
10 the United States, annual cash payments equal to the average price of any Excess Water sold  
11 annually under paragraph 5 above multiplied by the total amount of such Excess Water sold or  
12 the unused CAP water contract entitlement of such tribe or tribes, whichever is less.

13 (2) Any annual revenues within the LBDF, except for revenues  
14 derived from the Capacity Charge described in subparagraph 6(e)(ii), that are in excess of what is  
15 needed to satisfy CAWCD's annual Exhibit "A" repayment obligation may be used to pay, in  
16 order of priority:

17 (i) Fixed OM&R Costs associated with delivery of CAP  
18 water in the current year to Indian tribes under long-term contracts;

19 (ii) One year of "tail end" prepayment, starting with  
20 repayment of non-interest bearing debt, of CAWCD's Exhibit "A" repayment obligation;

21 (iii) Repayment to the U.S. Treasury of Indian Fixed  
22 OM&R Costs previously paid using LBDF revenues that had already been credited against  
23 CAWCD's Exhibit "A" repayment obligation;

24 (iv) Repayment to the U.S. Treasury of costs associated  
25 with any Indian water rights settlement previously paid using LBDF revenues that had already  
26 been credited against CAWCD's Exhibit "A" repayment obligation;

27 (v) Payment of any annual installment on any CAP-  
28 related 9(d) debt (43 U.S.C. § 485(d)) assumed by the United States; and

1 (vi) Payment to the U.S. Treasury of the difference  
2 between CAWCD's \$1,650,000,000 repayment obligation and the result of any CAP cost  
3 allocation undertaken by the United States for the Water Supply System and Regulatory Storage  
4 Stages of the CAP.

5 (ii) Reclamation will provide CAWCD an annual accounting of its uses  
6 of LBDF revenues under this subparagraph 8(d).

7 (iii) If for whatever reason a final judgment is not entered into in  
8 accordance with this Stipulation then the provisions of this subparagraph shall have no effect and  
9 shall not govern the utilization of LBDF revenues. To satisfy this condition, any legislation  
10 enacted by Congress must provide that the authority to use LBDF revenues as described herein  
11 shall not be effective if a final judgment is not entered in accordance with this Stipulation.

12 (e) From the date of this Stipulation until litigation resumes or the Expiration  
13 Date, whichever occurs first, CAWCD and the United States will operate and relevant payments  
14 and credits will be adjusted and made pursuant to this Stipulation. Neither CAWCD nor the  
15 United States shall have waived any of the conditions set forth in this paragraph by any action or  
16 inaction pursuant to this Stipulation prior to all of the conditions having occurred. Until all of the  
17 conditions have occurred, any payment, credit or adjustment made or accepted pursuant to this  
18 Stipulation shall be without prejudice to any claim or cause of action of CAWCD or the United  
19 States existing prior to the date of this Stipulation. In the event that these conditions are not  
20 satisfied and litigation resumes pursuant to subparagraph 8(f) of this Stipulation, then no  
21 penalties will be assessed against CAWCD for any underpayments that might be determined to  
22 relate to the period from the date of this Stipulation until litigation resumes or the Expiration Date,  
23 whichever occurs first. The Arizona State Treasury investment rate shall apply to any over or  
24 underpayments during such period.

25 (f) As noted above, the provisions of this paragraph are a condition to the  
26 effectiveness of this Stipulation. They are, however, not intended to, in any way, control the  
27 actions of the Secretary or any other Party. The Court shall maintain jurisdiction over the  
28 administration of this Stipulation until such time as these conditions are met. Upon the



1 occurrence of all conditions within this Stipulation, the Parties shall notify the Court and move  
2 for entry of a final judgment consistent with this Stipulation. This Stipulation shall be effective  
3 on the entry of such final judgment ("Effective Date"). If all conditions within the Stipulation are  
4 not met prior to the date that is three years from the date of this Stipulation ("Expiration Date"),  
5 this Stipulation shall terminate automatically, and except for the last two sentences of  
6 subparagraph 8(e) above regarding non-assessment of penalties, no party shall be bound by any  
7 of its terms. If, at any time it appears that all conditions within this Stipulation cannot be met  
8 before the Expiration Date, the Parties shall meet and confer about amending this Stipulation.  
9 However, absent agreement on an amendment to this Stipulation, either CAWCD or the United  
10 States may petition the Court to terminate the Stipulation prior to the Expiration Date, and, upon  
11 the granting of that petition, the litigation shall resume. Matters resolved through decision of this  
12 Court at the time this Stipulation is filed shall be considered "law of the case" and shall not be  
13 relitigated. All appeal rights are reserved, including the United States appeal in *Central Arizona*  
14 *Water Conservation District v. United States*, No. 99-15124 (9th Cir.).

15 (g) As noted in subparagraph 2(a) and elsewhere herein, the Exhibit "A"  
16 repayment obligation is predicated upon the premise that a total of 665,224 acre feet of Project  
17 Water has been allocated for Federal purposes. In the event there is a change in the amount of  
18 Project Water allocated for Federal purposes from that assumed herein, CAWCD and the United  
19 States will meet and confer with respect to any appropriate adjustment to Exhibit "A." In the  
20 event that there is a dispute between the parties or over the amount of any such adjustment, then  
21 CAWCD and the United States will follow the ADR procedures set forth in paragraph 11 below.

22 9. Upon the Effective Date, all claims for relief raised by Intervenor in this case are  
23 deemed to be fully resolved in accordance with the provisions of this Stipulation. Subject to  
24 paragraph 8 of this Stipulation, the United States withdraws its objections filed in the  
25 bankruptcy action involving Intervenor Central Arizona Irrigation and Drainage District.

26 10. (a) Upon the Effective Date, all matters within the Complaint and Counterclaim  
27 not specifically mentioned herein are dismissed with prejudice, and the final judgment entered  
28 pursuant to subparagraph 8(f) is binding upon all Parties.

1           (b)     Upon the Effective Date, for and in consideration of CAWCD performing  
2 its obligations under this Stipulation, the fact and sufficiency of which are hereby acknowledged,  
3 the United States releases and forever discharges CAWCD, its present and former officers,  
4 directors, employees, agents, attorneys, advisors, representatives, and their respective  
5 successors and assigns from any and all claims, demands, rights, and causes of action of  
6 whatsoever kind and nature, whether known or unknown, which the Department of the Interior  
7 may have against CAWCD on account of the claims for relief in the Complaint and Counterclaim.  
8 This release does not apply to claims arising under criminal or tax law, claims sounding in fraud,  
9 or the claims of any United States Government agency other than the Department of the Interior.

10           (c)     Upon the Effective Date, for and in consideration of the United States  
11 performing its obligations under this Stipulation, the fact and sufficiency of which are hereby  
12 acknowledged, CAWCD releases and forever discharges the United States and all Federal  
13 Defendants, their present and former officers, employees, agents, attorneys, advisors,  
14 representatives, and their respective successors and assigns from any and all claims, demands,  
15 rights, and causes of action of whatsoever kind and nature, whether known or unknown, which  
16 CAWCD may have against the United States and all Federal Defendants on account of the claims  
17 for relief in the Complaint and Counterclaim.

18           (d)     Upon the Effective Date, in accordance with 28 U.S.C. § 2672, this  
19 Stipulation is final and conclusive upon CAWCD and constitutes a complete release of any  
20 claim by CAWCD against the United States and any employee of the United States whose act or  
21 omission gave rise to CAWCD's Federal Tort Claims Act claim, dated January 24, 1992, by  
22 reason of the same subject matter. It is further agreed that, as of the Effective Date, this  
23 Stipulation constitutes a complete and final settlement of all claims for relief asserted by CAWCD  
24 in *Central Arizona Water Conservation District v. United States*, Case Number 92-51C, in the  
25 United States Court of Federal Claims.

26           (e)     CAWCD agrees to reimburse, indemnify and hold harmless the United  
27 States, its agents, servants, and employees from and against any and all causes of action, claims,  
28 liens, rights, or subrogated or contribution interests incident to or resulting from any act,